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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT TACOMA

10                 TONY L. COMBS,

CASE NO. C23-5727JLR

11                 Plaintiff,

ORDER

12                  v.

13                 ERIC B. SMITH, et al.,

14                 Defendants.

15                   **I. INTRODUCTION**

16         Before the court are: (1) the motion for summary judgment (MSJ (Dkt. # 20)) of  
17         Stafford Creek Corrections Center (“SCCC”) Sergeant Eric B. Smith and correctional  
18         officers Corey D. Evans and Carter H. Whipple (together, “Defendants”); and (2) the  
19         report and recommendation of United States Magistrate Judge Grady J. Leupold. (R&R  
20         (Dkt. # 38)). Neither *pro se* Plaintiff Tony L. Combs nor Defendants objected or  
21         otherwise responded to Magistrate Judge Leupold’s report and recommendation by the  
22         October 2, 2024 deadline. (*Id.* at 23; *see generally* Dkt.) Having carefully reviewed all

1 of the foregoing, along with all other relevant documents, and the governing law, the  
2 court ADOPTS the report and recommendation (Dkt. # 38), GRANTS Defendants'  
3 motion for summary judgment (Dkt. # 20), and DISMISSES Mr. Combs's complaint  
4 with prejudice.

5 **II. ANALYSIS**

6 A district court has jurisdiction to review a magistrate judge's report and  
7 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court  
8 may accept, reject, or modify, in whole or in part, the findings or recommendations made  
9 by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "The statute makes it clear that the  
10 district judge must review the magistrate judge's findings and recommendations *de novo*  
11 *if objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114,  
12 1121 (9th Cir. 2003) (en banc).

13 Mr. Combs is a former Washington state prisoner who was incarcerated at SCCC  
14 at all times relevant to his complaint. (Brown Decl. (Dkt. # 23) ¶ 5.) On August 14,  
15 2023, Mr. Combs filed a complaint pursuant to 42 U.S.C. § 1983 alleging that  
16 Defendants used excessive force against him in violation of his constitutional rights. (See  
17 Compl.) Because the parties did not object to the factual or procedural background set  
18 forth in the report and recommendation, the court adopts that portion of the report and  
19 recommendation and does not repeat it here. (See R&R at 2-7; *see generally* Dkt.)

20 Magistrate Judge Leupold recommends that the court grant Defendants' motion  
21 for summary judgment because Mr. Combs (1) failed to administratively exhaust his  
22 administrative remedies available before filing suit against Officer Whipple; and (2)

1 failed to state a claim of excessive use of force against Sergeant Smith and Officer Evans.  
2 (R&R at 1.)

3 The court has thoroughly examined the record before it and finds Magistrate Judge  
4 Leupold's reasoning persuasive in light of that record. Magistrate Judge Leupold  
5 properly analyzed Defendants' motion for summary judgment, even though it was not  
6 opposed, to ensure that Defendants satisfied their burden under Federal Rule of Civil  
7 Procedure 56(a) to demonstrate they are entitled to judgment as a matter of law. Fed. R.  
8 Civ. P. 56(a); (*see* R&R at 9). The court has also independently reviewed Defendants'  
9 motion and agrees with the reasoning and conclusions set forth in the report and  
10 recommendation. Accordingly, the court ADOPTS the report and recommendation and  
11 GRANTS Defendants' motion for summary judgment.

### III. CONCLUSION

13 ||| For the foregoing reasons, the court hereby ORDERS as follows:

14                     (1) The court ADOPTS the report and recommendation (Dkt. # 38) in its entirety;

15                     (2) Defendants' motion for summary judgment (Dkt. # 20) is GRANTED;

16                     (3) The court DISMISSES Mr. Combs's complaint (Dkt. # 1) and this action with

17 prejudice; and

18                     (4) The court DIRECTS the Clerk to send copies of this order to Mr. Combs, to

19 counsel for Defendants, and to Magistrate Judge Leupold.

20 Dated this 8th day of October, 2024.

  
JAMES L. ROBART  
United States District Judge